Supreme Court, U.S.
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No. 99-1741

IN THE

Supreme Court of the United States

SUNOCO, INC., SUN PIPE LINE COMPANY
and ATLANTIC PIPELINE CORP.,

Petitioners,

v.

STEVEN SEYMOUR, GERALDINE SEYMOUR, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
PENNSYLVANIA SUPREME COURT, MIDDLE DISTRICT

RESPONDENTS' BRIEF IN OPPOSITION

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REASONS FOR DENYING THE WRIT

The Petition for Writ of Certiorari, filed by Sunoco, Inc., Sun Pipe Line Company and Atlantic Pipeline Corp. ["Petitioners"] should not be granted as: (1) Petitioners' claim of due process violation was not before the Pennsylvania Supreme Court and was not properly preserved for this Court's review; (2) Pennsylvania law ensures that punitive damage awards are reasonable and satisfy the requirements of due process; and (3) Petitioners' articulated reasons for granting the writ of certiorari do not invoke due process rights.

I.

PETITIONERS' CLAIM OF DUE PROCESS VIOLATION WAS NOT BEFORE THE PENNSYLVANIA SUPREME COURT AND, THUS, WAS NOT PROPERLY PRESERVED FOR THIS COURT'S REVIEW.

Under Rule 10 of the Rules of the United States Supreme Court, "Review on a writ of certiorari is not a matter of right, but of judicial discretion. A petition for a writ of certiorari will be granted only for compelling reasons." The Rule then lists three considerations. The first consideration reviews decisions of a United States court of appeals. The second and third considerations seek review of a decision by a state court on an "important question of federal law." Respondents contend that none of these considerations are met in this case.

Although Petitioners present two questions for review, the basic argument advanced is that the Pennsylvania Supreme Court "deprived petitioners of the due process guaranteed by the Fourteenth Amendment." Petition for a

Writ of Certiorari, at 6. Although due process is an "important question of federal law", it was *not* an issue under review by the Pennsylvania Supreme Court. Following the Superior Court's finding that there was insufficient evidence to support the jury's $1,000,000 punitive damages award, Respondents filed a Petition for Allowance of Appeal to the Supreme Court of Pennsylvania, presenting this sole question for review:

> Whether the Superior Court violated its standard and scope of review and misapplied the Supreme Court's holding with respect to the imposition of punitive damages in deciding that Respondent Sun Pipe Line Company's actions did not rise to the level of reckless indifference. (Respondents' Petition for Allowance of Appeal, at 2).

It was this question that was certified for review by the Supreme Court and this question that was briefed and argued by the parties. At no time during this process did Petitioners raise the issue of due process.[1] In fact, Petitioners did not "mention" this issue until *after* the Supreme Court handed down its decision and Petitioners filed for Reargument. In their Petition for Reargument, Petitioners cite four "Points of Law or Fact Overlooked or Misapprehended by the Court." The fourth point states that the Supreme Court's Order "does

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1. Although Petitioners cite to pages in their briefs to the Superior and Supreme Courts where due process was discussed (Petition for a Writ of Certiorari, at 5-6), examination of these briefs reveals that the references where part of a quote from this Court's case of *Honda Motor Co., Inc. v. Oberg*, 114 S. Ct. 2331 (1994) where due process concerns are mentioned. There was no argument in these briefs that the imposition of punitive damages was a violation of Petitioners' due process rights.

not indicate the factual basis for its decision, nor does it indicate that the Court applied the stringent standards needed under Pennsylvania law and under Due Process requirements for punitive damages, and its reference to *Adamski*[2] suggests that this Court did not sufficiently address these Due Process concerns." (Petitioners' Application for Reargument, at iv).

Although arguably raised as a "Point" for the Supreme Court's consideration, Petitioners failed to brief their "due process concerns" in their Application for Reargument, thus waiving the issue.[3] *Estate of Lakatosh*, 441 Pa. Super. 133, 656 A.2d 1378 (1995) (argument portion of appellate brief must contain a pertinent discussion of the particular point raised along with discussion and citation of pertinent authorities). In a similar case, *Adams v. Robertson*, 520 U.S. 83 (1997), this Court held that petitioners failed to establish that they properly presented a due process challenge to Alabama's Supreme Court. Dismissing a writ of certiorari as improvidently granted, this Court wrote:

> With "very rare exceptions", we have adhered to the rule in reviewing state court judgments under 28 U.S.C. §1257 that we will not consider a petitioner's federal claim unless it was either addressed by, or properly presented to, the state that rendered the decision we have been asked to review . . . (citations omitted)

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2. *Adamski v. Miller*, 545 Pa. 316, 681 A.2d 171 (1996).

3. Again, the only reference to due process considerations in the Petition for Reargument was the same quote from the *Honda* case, used by Petitioners in their briefs to the Superior and Supreme Court. *See* n.1.

> When the highest court is silent on a federal question before us, we assume that the issue was not properly presented, and the aggrieved party bears the burden of defeating this assumption . . . by demonstrating that the state court had a "fair opportunity to address the federal question that is sought to be presented here."

520 U.S. at 85-86. (citations omitted).

Petitioners have not met their burden of showing that their due process challenge was properly presented to the Pennsylvania Supreme Court. Therefore, this "important question of federal law" — violation of Petitioners' due process rights — was not under consideration by the Pennsylvania Supreme Court and should not be accepted for review by this Court.

II.

PENNSYLVANIA LAW ENSURES THAT PUNITIVE DAMAGE AWARDS ARE REASONABLE AND SATISFY DUE PROCESS

Petitioners have asked this Court to intervene in this matter because "the Pennsylvania Supreme Court deprives petitioner and other interstate and intrastate citizens sued for punitive damages in Pennsylvania of the most fundamental due process checks against the unwarranted imposition of punitive damages." Petition for a Writ of Certiorari, at 7. Petitioners suggest that the Pennsylvania Supreme Court has "eroded the traditional safeguards against baseless punitive damages awards" and "treats the jury's punitive damages verdict as merely the resolution of a pure

question of fact that was essentially unreviewable . . ." Petition for a Writ of Certiorari, at 8, 10.

In support of their contention, Petitioners cite to *Kirkbride v. Lisbon Contractors, Inc.*, 521 Pa. 97, 555 A.2d 800 (1989), in which the Court held that punitive damages do not have to bear a reasonable relationship to compensatory damages awarded. However, contrary to Petitioners' position, this does not end a Pennsylvania Court's review of a punitive damages verdict, as a reasonable relationship must still exist between the nature of the cause of action underlying the compensatory award and the decision to grant punitive damages. 555 A.2d at 803-04. As this Court stated in *BMW of North America v. Gore*, 517 U.S. 559 (1996):

> Punitive damages may properly be imposed to further a state's legitimate interests in punishing unlawful conduct and deterring its repetition. In our federal system, states necessarily have considerable flexibility in determining the level of punitive damages that they will allow in different classes of cases and in any particular case. Most states that authorize exemplary damages afford the jury similar latitude, requiring only that the damages awarded be reasonably necessary to vindicate the state's legitimate interests in punishment and deterrence. (citations omitted).

Again, contrary to Petitioners' position, the Pennsylvania Supreme Court is not out of step with this Court's holdings in *Honda Motor Co., Ltd. v. Oberg*, 512 U.S. 415 (1994) and *Pacific Mutual Life Insurance Co. v. Haslip*, 499 U.S. 1 (1991). In *Sprague v. Walter*, 441 Pa. Super. 1, 656 A.2d

890, *alloc. denied*, 670 A.2d 142 (1995) the Court was faced with a challenge to the excessiveness of a punitive damages verdict, and in its opinion provides a comprehensive analysis on the law governing punitive damages in Pennsylvania.

> The Pennsylvania Supreme Court has never espoused any rule antithetical to the position of the United States Supreme Court's decision in *Honda Motor Co., Ltd. v. Oberg*. Pennsylvania law is quite clear that the courts of this Commonwealth have the power to review a jury's award of punitive damages for excessiveness. Although the standard of measure requires no comparison between the value of the compensatory damages and the total of the punitive damages, Pennsylvania courts must determine whether the punitive damage award advances the dual goals of punishment and deterrence and is disproportionate in character of the tortious act, to the harm suffered by the plaintiff, and to the wealth of the defendant. *Kirkbride v. Lisbon Contractors, Inc.*, 521 at 103-104, 555 A.2d at 803-04. Our courts are fully empowered to remit punitive damages whenever the award is shocking to the court's sense of justice. Id. The evaluation in such cases is subject to appellate review under an abuse of discretion standard. *Id.* 656 A.2d at 927.
>
> The Pennsylvania standard [applied in *Kirkbride*] clearly established by our Supreme Court appears to fully comport with the Alabama standard approved by the United States Supreme Court [in *Pacific Mutual Life Insurance Co. v. Haslip*]

> as satisfying the requirements of due process. See *W.W. Management and Development Company, Inc. v. Scottsdale Insurance Co.*, 769 F.Supp. 178, 180-84 (E.D.Pa. 1991) (Pennsylvania law makes considerable effort to ensure that punitive damage awards are reasonable and satisfy due process; the Pennsylvania system "kicks in" before the jury considers the matter and provides supervision throughout the appeal process); *Loughman v. Consol-Pennsylvania Coal Co.*, 740 F. Supp. 1114, 1124 (W.D.Pa. 1990), *aff'd in part, vacated on other grounds in part sub nom. Hughes v. Consol-Pennsylvania Coal Co.*, 945 F.2d 594 (3d Cir. 1991), *cert. denied*, 504 U.S. 955, 112 S.Ct. 2300, 119 L.Ed.2d 224 (1992) (Pennsylvania law protects against excess punitive damages by providing adequate guidelines for juror when calculating amount of award and permitting court to remit damages to more reasonable amount if punitive damages are so disproportionate as to shock the court's sense of justice when considering character of act, nature and extent of harm, and wealth of defendant). We therefore find no conflict between the law of Pennsylvania concerning punitive damages and the Fourteenth Amendment. 656 A.2d at 928.

Additionally, it should be noted that many of the United States Supreme Court cases cited by Petitioners in support of their claim involve punitive damages verdicts where the challenge was the *excessiveness* of the verdict. Although these cases are helpful in understanding this Court's rulings on the issue of punitive damages, they are not applicable to the present case, as Petitioners have never raised this issue. Thus, Petitioners' invocation of due process rights is not warranted.

> *Only* when an award can fairly be categorized as "grossly excessive" in relation to these interests [state's legitimate interests in punishment and deterrence] does it enter the zone of arbitrariness that violates the Due Process Clause of the Fourteenth Amendment. (emphasis added). *BMW of North America v. Gore*, 517 U.S. 559 (1996).[4]

III.

PETITIONERS' ARTICULATED REASONS FOR GRANTING THE WRIT DO NOT INVOKE DUE PROCESS RIGHTS

Petitioners articulate four reasons in support of their argument that they were deprived of due process.

1. The Supreme Court's order provides no analysis of the facts and does not reflect an independent determination that the facts warrant the imposition of punitive damages.

2. As the sole basis for its decision, the Court referred to its *Adamski* decision.

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4. Petitioners use of this same reference in their Petition (*see* p. 7) is misplaced and has been taken out of context to fit their argument. Petitioners argue that "Pennsylvania thus eliminated . . . one of the essential tests established by your Honorable Court in *BMW of North America, Inc. v. Gore*, for the judicial determination as to when punitive damages awards '*enter the zone of arbitrariness that violates the Due Process Clause of the Fourteenth Amendment.*' " Petitioners fail to cite the entire sentence, quoted above, which states that the Due Process Clause can *only* be invoked when there is an award that is "grossly excessive." There is no contention by Petitioners that the awards were excessive.

3. The resolution of whether the petitioners could have or should have been alerted to possible mechanical damage does not resolve the legal question as to whether the facts establish the requisite pre-accident state of mind to justify the imposition of punitive damages.

4. The facts do not show that petitioner acted with the state of mind that would justify the jury's punitive damages award.

Petition for a Writ of Certiorari, at 13-14.

However, for the reasons set forth below, none of these reasons invoke a deprivation of due process rights

A. The Pennsylvania Supreme Court Is Under No Obligation To Indicate a Factual Basis For Its Decisions.

In their first point, Petitioners argue that their due process rights were violated because the Supreme Court's Order did not contain a factual basis for its decision. Petitioners do not cite, nor can they cite, to any authority requiring the Pennsylvania Supreme Court to articulate the basis for its decision. Petitioners seem to argue that, since the Order does not set forth a written detailed factual analysis, that the Court never went through any analysis in making its decision. However, Petitioners offer no factual or legal support for this implausible statement.

B. The *Adamski* Case Is Directly On Point With the Issue That Was Before the Pennsylvania Supreme Court.

Petitioners' second point, that the Pennsylvania Supreme Court's use of the *Adamski* decision demonstrates a violation of due process rights is misplaced. Petitioners argue that the *Adamski* case is distinguishable from the present case because it did not involve the imposition of punitive damages. While *Adamski* did not involve the issue of punitive damages, the case is directly on point with the issue presented to the Pennsylvania Supreme Court — whether the Superior Court violated its standard and scope of review in deciding that Petitioners' actions did not rise to the level of reckless indifference.

The *Adamski* case involved an insurance coverage dispute that centered on the issue of whether Miller had the permission of his mother (the policyholder) to use her automobile. Following a bench trial, the trial court found that Miller had the mother's implied consent to use the vehicle. The trial court denied the insurance company's request for judgment n.o.v. On appeal, the Superior Court reversed, finding that the trial court had abused its discretion in deciding that implied consent existed. Adamski appealed to the Supreme Court, arguing that the Superior Court failed to review the evidence under the correct legal standard. The Supreme Court agreed, finding that the evidence found by the trial court was credible and amply supported the trial court's verdict. In its decision, the Supreme Court reiterated the proper standard of review:

> The proper standard of review of an appellate court when examining the lower court's refusal to grant a judgment n.o.v. is whether, when

> reading the record in a light most favorable to the verdict winner and granting that party every favorable inference therefrom, there was sufficient competent evidence to sustain the verdict. Questions of credibility and conflicts in the evidence are for the trial court to resolve and the reviewing court should not reweigh the evidence. Absent an abuse of discretion, the trial court's determination will not be disturbed. 681 A.2d at 173.

Thus, the *Adamski* case is directly on point with the present case since Respondents contended that the trial court found substantial evidence to support the punitive damages award and the Superior Court substituted its own judgment in violation of its standard and scope of review.[5]

C. The Record In This Case Clearly Supported the Jury's Award of Punitive Damages.

In its third and fourth points, Petitioners seek another opportunity to rehash the facts in this case. Respondents take issue with the statement that the "historical facts of this case, when accurately recounted and tested under the standard for punitive damages, are largely *undisputed*." Petition for a Writ of Certiorari, at 13 (emphasis added). Petitioners' version of the facts presented in its Concise Statement of the Case, pp. 1-6, ignores much of the key evidence that was disputed during the trial.

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5. Additionally, the Superior Court in the present case found no abuse of discretion on the part of the Trial Court. Thus, the Trial Court's determination that Sun's actions rose to the level of recklessness should not be disturbed. *See Adamski*, 681 A.2d at 173.

At trial, Respondents presented evidence that Petitioners were in possession of critical facts from the British Gas Report a year before the spill occurred but disregarded this critical information. Petitioners continued to operate the pipeline under pressure for over one (1) year despite this knowledge. Petitioners did not have sufficient controls in place so as to identify the loss of product in the pipeline and provide for immediate shutdown of the pipeline. The pipeline at Point Breeze and Boot Pump Station had old controls which did not detect a loss of product at the time of the failure and provide for an automatic shutdown so as to minimize the loss of product.

The Trial Court, in finding that the totality of the evidence was sufficient to support the jury's award of punitive damages stated:

> It is apparent that the pipeline was damaged by the metal treads of Norcini's front-end loader and inexorably this damage led to the inevitable pipe rupture which occurred in March of 1992. The risk of that rupture was substantially increased by that damage and Sun, although having available the "smart pig" test reports, failed to undertake any investigatory steps. Sun had within its hands not only the caliper and "smart pig" reports, but also information about the construction, the equipment being used and aerial reports, all supplemented by a knowledge of the "common carrier" nature of this pipeline, years of experience and use of this pipeline. Sun's suggestion that the "smart pig" was not developed for the purpose of uncovering reparable damage to a pipeline is irrelevant, since it is clear that the

> tests very effectively identify damage and its location, thereby minimizing the expenditure necessary for repair and prevention. Sun certainly had the capability to accomplish those tasks.
>
> Support for the requisite recklessness can be found in the evidence that: Sun assumed from the test reports that there was an acceptable level of corrosion undeserving of repair; Sun assumed there was no external damage based on the caliper pig test that had been conduct before the pipeline was damaged; Sun conducted no further caliper pig tests; Sun assumed the developers would follow Sun's procedures concerning crossing the right-of-way in spite of aerial reports; Sun visited the construction site when no equipment was operating and workers were absent without follow up; and Sun did nothing to follow up the "smart pig" test reports indicating external damage to the pipeline in the area of the eventual rupture. Although Sun had the resources and talent to inspect, analyze and react to such problems, it did nothing as regard this damage. Only the serendipity that this line carried oil instead of gasoline prevented a broader catastrophe. (Petition for Writ of Certiorari, Appendix C, at 35a-36a).

Petitioners also argue that the facts "viewed from petitioners' *pre-accident* perspective, do not show that, before the accident occurred, petitioner knew or even had reason to know of the hidden damage inflicted by the subcontractor's secretive trespass onto the pipe line, and that petitioner consciously or deliberately chose to allow the pipe line to rupture." Petition for Writ of Certiorari, at 15 (emphasis added).

However, Respondents presented evidence at trial that Sun knew in September 1989 that development and construction activity was proposed for the area surrounding the pipeline. From December 1989 through November 1990, there were numerous Sun interoffice reports and correspondence stating that Sun was concerned with heavy equipment crossing the pipeline in the area of construction of the new development. Sun's December 6, 1989 correspondence expressed concern about the possibility of heavy equipment crossing the existing pipeline. Sun knew that there were problems with communications between Rewis and Dambly and its contractor. Sun's concern continued and was heightened nine months later when an October 15, 1990 internal correspondence expressed Sun's recognition of the problem and the "need to reiterate our concern with heavy equipment crossing our lines during construction." A November 5, 1990 Sun report states "backhoe east of ROW [right-of-way]" and "dozer crossing ROW (reported before)." Two weeks later, the front-end loader damaged the pipeline. On December 7, 1990, Sun knew that there was active ground clearing and heavy equipment in the pipeline area.

The Honorable Sydney Hoffman, in his dissent of the Superior Court panel's judgment vacating the punitive damages award, summarized the evidence as follows:

> I believe that there is sufficient competent evidence to uphold the award of punitive damages. After receiving reports that heavy equipment had crossed the pipeline at the Shepard Lane site, an associate pipeline engineer expressed concern in a memorandum that the pipeline may have been damaged. The company

> then received test results that revealed extensive metal loss in the area of Shepard Lane, the same area where the pipeline engineer was concerned about damage from heavy machinery. Moreover, the pipeline carried petroleum products that presented an enormous risk to the property and the population in the areas surrounding the pipeline. Furthermore, an expert testified that, given the information Sun possessed about the pipeline at the Shepard Lane site, Sun should have investigated whether the pipeline needed repair. Despite the obvious warning signs that the pipeline suffered damage at the Shepard Lane site, Sun did not bother to send engineers to the Shepard Lane site to inspect the section of pipeline. Accordingly, I believe that Sun had reason to know of a high degree of risk by failing to take affirmative steps to investigate and remedy the pipeline. Certainly, viewing the evidence in the light most favorable to appellees and considering the risk involved in transporting hazardous materials, the jury's award of punitive damages was proper. Petition for Writ of Certiorari, Appendix B, at 19a).

Thus, Petitioners' claims of largely undisputed facts and lack of pre-accident evidence is unfounded.

CONCLUSION

For the aforementioned reasons, Respondents respectfully request that the Honorable Court deny the Petition.

Respectfully submitted,

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